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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1086 95

THE MOODY BIBLE INSTITUTE OF CHICAGO,
Appellant,

vs.

CITY OF CHICAGO.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

HOWARD F. BISHOP,
WARREN H. ORR,
Counsel for Appellant.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions believed to sustain the jurisdiction	2
Statute of the State of Illinois the validity of which is involved	2
Judgment appealed from and application for appeal	2
Nature of the case, rulings of the court and cases believed to sustain the jurisdiction	3
Federal questions involved are substantial	7
Question of federal jurisdiction raised in state courts	7
Alternative prayer for writ of certiorari and for time to file briefs in support thereof	8
Appendix "A"—Opinion of the Supreme Court of Illinois	9

Table of Cases Cited.

Appleby v. *Buffalo*, 221 U. S. 524	6
Chapman v. *Goodnow's Admr.*, 123 U. S. 540	8
C., B. & Q. R. R. Co. v. *Chicago*, 166 U. S. 226	6, 8
Cincinnati v. *Louisville, etc., R. Co.*, 233 U. S. 390	6
Griffith v. *Connecticut*, 218 U. S. 563	7
Hendersonville Light & Power Co. v. *Blue Ridge I. R. Co.*, 243 U. S. 563, 61 L. Ed. 900	4
Interstate Amusement Co. v. *Albert*, 239 U. S. 500	7
Kansas City Southern R. R. Co. v. *C. H. Albers Co.*, 223 U. S. 573	7
Murray v. *Charleston*, 96 U. S. 232	7
Norwood v. *Baker*, 172 U. S. 277	8
O'Neill v. *Leamer*, 239 U. S. 245, 60 L. Ed. 249	6
People v. *Kelly*, 361 Ill. 54	4
Sulley v. *American National Bank*, 178 U. S. 289	3

Page

Truax v. *Corrigan*, 257 U. S. 333 7
U. Rys. & E. Co. v. *West*, 280 U. S. 234 6
Van Dyke v. *Ill. Comm. Men's Assn.*, 358 Ill. 458 4

STATUTES CITED.

Constitution of the United States, 14th Amendment 2
Judicial Code, Section 237 (28 U. S. C. A. 344) 2
Local Improvement Act of Illinois (1941 Ill. Rev. Stats. Chap. 24, Sec. 84-1 to 84-99) 2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1086

THE MOODY BIBLE INSTITUTE OF CHICAGO,
A CORPORATION NOT FOR PROFIT,
Appellant,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Appellee.

SUPREME COURT OF ILLINOIS.

No. 26665.

STATEMENT OF JURISDICTIONAL FACTS.

Pursuant to Rule 12, paragraph 1, of the Rules of the Supreme Court of the United States, THE MOODY BIBLE INSTITUTE OF CHICAGO, a corporation, appellant, presents the following statement, particularly discussing the basis upon which appellant contends that the Supreme Court of

the United States has jurisdiction upon appeal to review the decree of the Supreme Court of the State of Illinois appealed from herein.

A.

The Statutory Provisions Believed to Sustain the Jurisdiction.

Section 237, of the Judicial Code of the United States, 28 U. S. C. A., Section 344.

B.

The Statute of the State of Illinois, the Validity of Which Is Involved.

As construed by the Supreme Court of the State of Illinois, the provisions of the Local Improvement Act (1941 Ill. Rev. Stats., Chap. 24, Sec. 84-1 to 84-99) violate petitioner's constitutional guarantees under Section 1 of the 14th Amendment to the United States Constitution.

The provisions of this act authorize various municipalities of the State to construct local improvements by special assessment or otherwise and to exercise the power of eminent domain where the construction of the improvement requires the taking or damaging of private property.

C.

The Judgment Appealed From and Application for Appeal.

Judgment was rendered and the opinion of the Supreme Court of the State of Illinois in this case was filed on the 17th day of November, 1942. The motion of appellant for rehearing was denied by the Supreme Court of the State of Illinois on the 13th day of January, 1943, and the judgment of the court thereupon became final. The application for

appeal to this Court is presented herewith by petition, within three (3) months after said judgment became final.

D.

The Nature of the Case, Rulings of the Court and Cases Believed to Sustain the Jurisdiction.

A mandamus suit was filed herein in the Superior Court of Cook County, Illinois, to enforce the constitutional right of the appellant to just compensation in the payment of the balance of $365,782.00 and interest due on the unconditional judgment awarded in its favor against the city of Chicago by the County Court of Cook County in November, 1930, for property taken and damaged in connection with the construction of a local improvement in the City of Chicago.

The claim that the provisions of the Local Improvement Act violated appellant's rights under the due process clause of the State as well as of the Federal Constitutions, has been raised and contended for consistently from the time the suit was filed in the *nisi* court to the entry of the opinion in this Court.

The Supreme Court has repeatedly held that the requirement of "just compensation" requires the reasonably prompt payment of a condemnation judgment. *People* v. *Kelly*, 361 Ill. 54, 58. As consistently urged by the appellant, the refusal of the city to pay the remainder of the judgment for nearly thirteen (13) years deprived appellants of just compensation. It has also been urged that stipulations cannot change the terms of a court's final judgment unless included within and made a part of that judgment. The opinion of the Illinois Supreme Court correctly states that one of appellant's chief contentions was that the stipulation, if used as a bar to the payment of the judgment, was a violation of Section I of the 14th Amend-

ment of the United States Constitution. A constitutional question is, therefore, necessarily involved in this case. *Van Dyke* v. *Ill. Comm. Men's Ass'n*, 358 Ill. 458.

The United States Supreme Court has taken jurisdiction of cases where much less was done to raise the Federal question than was done by the appellant in the case at bar, where it has made five consecutive efforts to secure its constitutional rights. In *Hendersonville Light & Power Co.* v. *Blue Ridge I. R. Co.*, 243 U. S. 563, 61 L. Ed. 900, Justice Holmes said:

> "The respondents in their answer set up that the condemnation in this manner and for the purpose alleged would be the taking of private property without due process of law, in violation of the 14th amendment, and we assume that the record discloses a technical right to come to this court (citing cases). The decision of the Supreme Court in sustaining the condemnation discusses only matters of state law, but the Chief Justice dissenting, intimated that the taking infringed the Constitution of the United States."

The case of *O'Neill* v. *Leamer*, 239 U. S. 245, 60 L. Ed. 249, 263, shows that what petitioner did here is sufficient to present a Federal question. At p. 263 (L. Ed.) the court said:

> "The plaintiffs assailed the Nebraska Statute as repugnant to the state constitution, and further averred that to permit the defendants to construct the ditch would deprive the plaintiffs of their property without due process of law and deny him the equal protection of the laws, in violation of the 14th Amendment * * *"

And at page 264 the court denied the motion to dismiss the writ of error, saying:

> "The defendants in error have moved to dismiss upon the ground that there is no Federal question

whatever presented by the record. But we think that the plaintiffs sufficiently raised the question whether the appropriation was essentially for private purpose, and hence contrary to the 14th Amendment, as amounting to a deprivation of property without due process of law, and that their contention as to their Federal right in this respect was denied by the state court. In this view, jurisdiction attaches (citing cases) and we pass to the consideration of the statutory plan."

Appellant likewise contends that the very purpose and gist of this suit was to secure just compensation and that the record and pleadings present Federal questions of which the United States Supreme Court has jurisdiction.

The appellant here has invoked the constitutional guarantee for the payment of just compensation for its property taken for public use and the defendant pleads a stipulation which it alleges is a bar to the suit. As found and stated by the Illinois Supreme Court in its opinion herein:

"In its reply to the answer of the defendants in error and on the trial it was claimed that the stipulation, if used as a bar to payment of the judgment, was a violation of the provisions of the Illinois and Federal constitutions, in that such use was (1) a violation of section 13 of Article II of the Illinois constitution, which provides that just compensation shall be paid for property taken or damaged for public use, and (2) a violation of the Illinois constitution and section 1 of the fourteenth amendment to the constitution of the United States which provide that no person shall be deprived of his property without due process of law."

Appellant's further contention is that the rulings of law by the courts below upon the evidence herein, prevented it from obtaining just compensation for its property, and constituted a violation of its rights to an equal protection of the laws as well as of the right to due process of law under the fourteenth amendment.

The right to exercise the power of eminent domain or condemnation and to take or damage private property for public improvement is inherent in every State. But to satisfy the due process provision of the Federal constitution, proper and adequate provisions must be made for just compensation to be paid to the owners of the property affected. *Cincinnati* v. *Louisville, etc., R. Co.*, 233 U. S. 390; *U. of So. Cal.* v. *Robbins*, 295 U. S. 738.

The taking and damaging of appellant's property in the case at bar, without the payment of full and just compensation therefor, constituted a denial of its right to due process of law under the Federal Constitution. *Appleby* v. *Buffalo*, 221 U. S. 524; *Norwood* v. *Baker*, 172 U. S. 277.

Where a judgment of a State court authorizes the taking of private property for public use without the payment of just compensation, the affirmance of such judgment by the highest court of the State is a denial of the right secured to the owner by the due process clause of the Federal Constitution. *Chicago, etc., R. Co.* v. *Chicago*, 166 U. S. 226.

Nor can private property be constitutionally taken for public use at a compulsory price which falls below the measure of just compensation. *U. Rys. & E. Co.* v. *West*, 280 U. S. 234.

As hereinabove already pointed out, a further violation of appellant's constitutional rights under the 14th amendment arose out of the rulings of law upon the evidence herein. Appellant's first contention is that the stipulation upon which appellee relies cannot be used as a bar to defeat the claim for full payment of the compensation as adjudicated by the County Court. It next contends that even if such a stipulation could lawfully be given such effect in a proper case, the evidence herein, introduced by the appellee itself, showed that all of requirements of the stipulation were complied with by appellant and that it was therefore

entitled to full payment of its judgment. There is no evidence in the record to support the ruling of the lower courts to the effect that the stipulation barred appellant's right to collect its judgment in full.

Where a finding of fact is not supported by any evidence, as in the present case, and the finding deprives appellant of a constitutional right, the Supreme Court will review the record. *Interstate Amusement Co.* v. *Albert*, 239 U. S. 500; *Truax* v. *Corrigan*, 257 U. S. 333; *Kansas City Southern R. R. Co.* v. *C. H. Albers Co.*, 223 U. S. 573.

E.

The Federal Questions Involved Are Substantial.

The inherent right of appellant as a property owner in a special assessment proceeding to obtain just compensation for its property, either taken or damaged, and to have access to the courts for the protection of its rights upon the same terms, conditions, and equality with other persons similarly situated, are the issues in this case. The repugnancy of the Local Improvement Act of the State of Illinois to these constitutional rights under the principles contended for herein, has never been adversely determined by this Court, and appellant's contentions are sustained by the numerous decisions of this Court. (See authorities cited under foregoing subdivision.) The questions presented are not frivolous. *Griffith* v. *Connecticut*, 218 U. S. 563, 573.

F.

Questions of Federal Jurisdiction Raised in State Courts.

The foregoing questions of Federal jurisdiction were first raised by appellant in the trial court, as pointed out by the opinion of the Illinois Supreme Court. The questions

were again raised and argued in all of appellant's briefs in the Illinois Supreme Court.

Appellant contends that the construction placed upon the provisions of the Local Improvement Act, applicable to the facts involved in the case at bar, violated appellant's rights under the fourteenth amendment to the Federal Constitution. To the best of appellant's knowledge, these questions have never been passed upon by the Supreme Court of the United States.

The question of the repugnancy of the involved provisions of the Local Improvement Act to the 14th amendment to the Federal Constitution was fairly and timely raised, is presented by the record and was necessary to a determination of the cause. *Chapman* v. *Goodnow's Admr.*, 123 U. S. 540, 548; *Murray* v. *Charleston*, 96 U. S. 232; *C. B. & Q. R. R. Co.* v. *Chicago*, 166 U. S. 226; *Sulley* v. *American National Bank*, 178 U. S. 289.

Alternative Prayer for Writ of Certiorari and for Time to File Briefs in Support Thereof.

Appellant prays that in the event that this Honorable Court finds that the record and pleadings herein fail to disclose a jurisdictional question reviewable by this Court on appeal, that the case may then be considered as an application for a writ of certiorari and that appellant be allowed reasonable time within which to file its brief in support thereof.

Respectfully submitted,

HOWARD F. BISHOP,
Attorney;
WARREN H. ORR,
Of Counsel.